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7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No.

2011-567

11 **OZELL EMANUEL DIAZ**
12 **19448 Chuparosa Road**
13 **Apple Valley, CA 92307**
Registered Nurse License No. 704744

A C C U S A T I O N

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
19 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
20 Consumer Affairs.

21 2. On or about June 14, 2007, the Board of Registered Nursing issued Registered Nurse
22 License Number 704744 to Ozell Emanuel Diaz ("Respondent"). The Registered Nurse License
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 November 30, 2012, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing ("Board"), under
27 the authority of the following laws. All section references are to the Business and Professions
28 Code ("Code") unless otherwise indicated.

1

2 **STATUTORY PROVISIONS**

3 4. Section 490 of the Code provides:

4 “(a) In addition to any other action that a board is permitted to take against a licensee, a
5 board may suspend or revoke a license on the ground that the licensee has been convicted of a
6 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
7 or profession for which the license was issued.

8 (b) Notwithstanding any other provision of law, a board may exercise any authority to
9 discipline a licensee for conviction of a crime that is independent of the authority granted under
10 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
11 of the business or profession for which the licensee's license was issued.

12 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a
13 conviction following a plea of nolo contendere. Any action that a board is permitted to take
14 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
15 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
16 made suspending the imposition of sentence, irrespective of a subsequent order under the
17 provisions of Section 1203.4 of the Penal Code.”

18 5. Section 2750 of the Code provides, in pertinent part, that the Board may discipline
19 any licensee, including a licensee holding a temporary or an inactive license, for any reason
20 provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

21 6. Section 2761 of the Code provides, in pertinent part:

22 “The board may take disciplinary action against a certified or licensed nurse or deny an
23 application for a certificate or license for any of the following:

24

25 ~~(f) Conviction of a felony or of any offense substantially related to the qualifications,~~
26 ~~functions, and duties of a registered nurse, in which event the record of the conviction shall be~~
27 ~~conclusive evidence thereof.”~~

28 7. Section 2762 of the Code provides, in pertinent part,

1 “In addition to other acts constituting unprofessional conduct within the meaning of this
2 chapter it is unprofessional conduct for a person licensed under this chapter to do any of the
3 following:

4 ...

5 (b) Use any controlled substance as defined in Division 10 (commencing with Section
6 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
7 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
8 himself or herself, any other person, or the public or to the extent that such use impairs his or her
9 ability to conduct with safety to the public the practice authorized by his or her license.

10 (c) Be convicted of a criminal offense involving the prescription, consumption, or self-
11 administration of any of the substances described in subdivisions (a) and (b) of this section, or the
12 possession of, or falsification of a record pertaining to, the substances described in subdivision (a)
13 of this section, in which event the record of the conviction is conclusive evidence thereof.”

14 8. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
15 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
16 licensee or to render a decision imposing discipline on the license.

17 REGULATORY PROVISIONS

18 9. California Code of Regulations, title 16, section 1444, provides:

19 “A conviction or act shall be considered to be substantially related to the qualifications,
20 functions or duties of a registered nurse if to a substantial degree it evidences the present or
21 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
22 safety, or welfare.

23 Such convictions or acts shall include but not be limited to the following:

24 (a) Assaultive or abusive conduct including, but not limited to, those violations listed in
25 subdivision (d) of Penal Code Section 11160.

26 (b) Failure to comply with any mandatory reporting requirements.

27 (c) Theft, dishonesty, fraud, or deceit.

28 (d) Any conviction or act subject to an order of registration pursuant to Section 290 of the

1 Penal Code.”

2 **COST RECOVERY**

3 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
4 administrative law judge to direct a licensee found to have committed a violation or violations of
5 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
6 enforcement of the case.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Conviction of a Substantially-Related Crime)**

9 11. Respondent is subject to disciplinary action under section 2761, subdivision (f) and
10 section 490 of the Code, as defined in California Code of Regulations, title 16, section 1444, in
11 that he was convicted of a crime substantially related to the qualifications, functions or duties of a
12 registered nurse as follows:

13 12. On or about September 14, 2010 in the criminal matter entitled *People v. Ozell Diaz*,
14 San Bernardino County Superior Court Case No. TV11000779, Respondent pled no contest to a
15 violation of California Vehicle Code section 23152 (b), driving with a blood alcohol level at .08%
16 or above, a misdemeanor. Respondent was placed on informal probation for three years, ordered
17 to attend a alcohol multi-offender education course, complete 125 hours of community service
18 work, and pay fines. The circumstances surrounding the conviction are that on or about February
19 17, 2010, Respondent was pulled over by California Highway Patrol while he was driving home
20 from a bar. His blood alcohol level at the time of driving was .114%.

21 13. On or about August 21, 2002, Respondent suffered a previous conviction for driving
22 under the influence.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Dangerous Use of Alcohol)**

25 14. Respondent is subject to disciplinary action under section 2762, subdivision (b) of the
26 Code, in that Respondent used alcohol to an extent or in a manner dangerous or injurious to
27 himself, and the public. Complainant refers to, and by this reference incorporates, the allegations
28 set forth above in paragraphs 12 and 13, as though set forth fully.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Conviction for Alcohol Related Offense)**

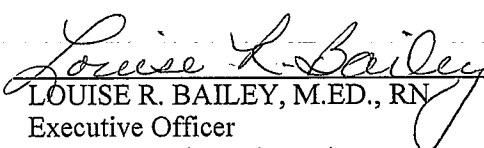
3 15. Respondent is subject to disciplinary action under section 2762, subdivision (c) of the
4 Code, in that Respondent was convicted of a crime involving the use of alcohol. Complainant
5 refers to, and by this reference incorporates, the allegations set forth above in paragraphs 12 and
6 13, as though set forth fully.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

- 10 1. Revoking or suspending Registered Nurse License Number 704744, issued to Ozell
11 Emanuel Diaz;
- 12 2. Ordering Ozell Emanuel Diaz to pay the Board of Registered Nursing the reasonable
13 costs of the investigation and enforcement of this case, pursuant to Business and Professions
14 Code section 125.3;
- 15 3. Taking such other and further action as deemed necessary and proper.
- 16
17

18 DATED: 12/23/10


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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